

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Avi Springer	Team: Team # 1	CCRB Case #: 200306018	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 11/19/2002 9:00 AM	Location of Incident: § 87(2)(b)	Precinct: 70	18 Mo. SOL 5/19/2004	EO SOL 5/19/2004	
Date/Time CV Reported Thu, 08/07/2003 3:53 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 08/07/2003 3:53 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. LT Brian McGinn	00000	910284	B/S-END

Officer(s)	Allegation	Investigator Recommendation
A.LT Brian McGinn	Abuse: Lieutenant Brian McGinn authorized the entry and search of § 87(2)(b)	§ 87(2)(b)
B. Officers	Force: Officers used physical force against § 87(2)(b)	§ 87(2)(b)
C.LT Brian McGinn	Abuse: Lieutenant Brian McGinn threatened to arrest § 87(2)(b)	§ 87(2)(b)

### Synopsis

On November 19, 2002, officers from the Brooklyn South East Narcotics Division, acting under the supervision of Lieutenant Brian McGinn, executed a search warrant at the apartment of the complainant, § 87(2)(b) (*Allegation A: premises entered and searched*). During the incident, § 87(2)(b) and his houseguest, § 87(2)(b) were arrested for § 87(2)(b). § 87(2)(b) alleges that unidentified officers pushed him to the ground and handcuffed him (*Allegation B: force*). § 87(2)(b) further alleges that, when he “mouthed off” to the officers, Lieutenant McGinn threatened to arrest § 87(2)(b) s wife, § 87(2)(b) if he did not apologize (*Allegation C: threat of arrest*).

§ 87(2)(g)

### Summary of Complaint

§ 87(2)(b) a § 87(2)(b)-old black male who § 87(2)(b), filed a complaint with the Internal Affairs Bureau on July 21, 2002. In this complaint, § 87(2)(b) stated that officers had executed search warrants at his home twice in the past year; § 87(2)(g)

In his interview on August 1, 2003 (enc. 4A-D), § 87(2)(b) stated that on November 19, 2002, sometime between 9:00 and 11:00 AM, he was in the kitchen of his apartment (§ 87(2)(b)) making breakfast. § 87(2)(b) s friend, whom he knows only as “§ 87(2)(b)” was in the living room, and § 87(2)(b) s wife, § 87(2)(b) who was nine months pregnant, was in the bedroom. Suddenly, five or six plainclothes police officers forcefully opened the door and rushed into the apartment with their guns drawn. They were yelling, “Everyone on the floor!” Two officers, whom § 87(2)(b) was unable to describe “because everything happened so fast,” grabbed § 87(2)(b) who was still standing up, by his arms and led him from the kitchen into the living room. Once in the living room, the officers pushed § 87(2)(b) to the ground and handcuffed him. § 87(2)(b) looked up and saw that § 87(2)(b) too was on the ground and had been handcuffed. Soon, § 87(2)(b) s wife was brought out of the bedroom in handcuffs; because she was pregnant, though, the officers quickly removed her cuffs and allowed her to sit in a chair.

The officers told § 87(2)(b) that they had obtained a search warrant because they heard he was “selling weed and guns.” § 87(2)(b) told them, “Search if you want to.” At this point, the officers brought dogs into the apartment, which they utilized to conduct a search. § 87(2)(b) was especially upset because the officers “tore up his place,” despite the fact that he believed “the dog was supposed to do [all of the searching].” When asked what he meant by “tearing up his place,” § 87(2)(b) explained that the officers took the mattress off of his bed and went through his drawers. The officers also searched the pockets of § 87(2)(b) his wife, and § 87(2)(b)

While they did not find any contraband in the apartment or on § 87(2)(b) the officers did discover “four or five bags of weed” in § 87(2)(b) pocket. Rather than arresting just § 87(2)(b) though, the officers “split up” the charges and arrested § 87(2)(b) as well. When § 87(2)(b) began “mouthing off,” telling the officers that they were “a bunch of rogue cops” and that he would “go down to 1 Police Plaza” to report them, the officer who seemed to be in charge, an older-looking white male, said that if he did not apologize to them, they would arrest his wife too. § 87(2)(b) believed that this was the supervising officer on the scene because he was giving other officers orders; § 87(2)(b) noted that this officer was also present, and again appeared to be the supervisor on the scene, during the May 6, 2003 incident. § 87(2)(b) apologized and the officers left his

wife behind. § 87(2)(b) and § 87(2)(b) were then taken to the 70<sup>th</sup> precinct and charged with § 87(2)(b). § 87(2)(b) went to court and was fined fifty or sixty dollars.

§ 87(2)(b) was asked to explain the long interval between the incident dates and the date he made his complaint. He stated that he had waited to report the incidents for some time because he did not wish for the investigation to commence until he was ready to move out of the 70<sup>th</sup> precinct, where he feared officers would retaliate against him. At the time of the interview in August, § 87(2)(b) stated that he and his wife were in the process of looking for a place to move. § 87(2)(b)

### **Results of Investigation**

#### **Attempts to Interview Civilian Witnesses:**

While § 87(2)(b) was unable to provide “§ 87(2)(b) real name or contact information, the investigator discovered from the BADS database that a man named § 87(2)(b) was arrested with § 87(2)(b) during the incident. Using the address provided in the arrest report and the Coles directory, the investigator attempted to contact § 87(2)(b) by mail and telephone. § 87(2)(b) did not respond to the contact attempts. The investigator attempted to confirm his contact information using the DMV database, but there was no listing for him.

The investigator also attempted to interview § 87(2)(b) on November 19 and December 2, 2003. However, § 87(2)(b) missed both appointments without calling to cancel.

#### **Officer Statements:**

Lieutenant Brian McGinn, who is currently assigned to the 20<sup>th</sup> precinct, was interviewed on December 15, 2003 (enc. 5A-B). On November 19, 2002, Lieutenant McGinn performed a day tour for Narcotics Borough Brooklyn South. He was the assigned supervisor for the execution of a search warrant at § 87(2)(b). He was in plainclothes.

Lieutenant McGinn stated that he had no independent recollection of the search warrant execution. Based upon the tactical plan for the warrant execution, which he referred to during the interview, his own team performed the entry into the apartment. Lieutenant McGinn stated that he could not recall how many individuals were inside the apartment, where in the apartment they were located, or by whom or how these individuals were secured. Lieutenant McGinn stated that, based upon the tactical plan, any of the officers assigned to enter the apartment-- himself, Sergeant Seychell, Detective Tacconi, Detective McGinn, Detective Perry, Detective Ward, and Detective Loporto-- may have secured individuals inside the apartment. He stated that it was less likely that Detective Venezia or Detective Levine had secured anyone, as they were assigned to security duties outside of the apartment. He stated that, in general, due to the safety risks inherent in search warrant executions, officers may enter an apartment with their guns drawn, handcuff any civilians inside the apartment, and place these civilians on the floor while the search is conducted. He stated that officers may search the civilians inside the apartment, as well as the apartment itself.

Lieutenant McGinn stated that he could not recall whether any contraband was recovered from the location as a result of the search. He could not recall whether any arrests were made, noting that, since he had switched commands, he no longer had access to his DAR from the incident date.

Lieutenant McGinn stated that, he could not recall the demeanor or behavior of any of the apartment's occupants during the search warrant execution. He did not recall any interactions he or the other officers had with these individuals. He denied that he or any other officer threatened to arrest § 87(2)(b)'s wife if § 87(2)(b) did not apologize for his behavior.

The investigator obtained Detective Paul Tacconi's criminal court depositions for the cases against § 87(2)(b) and § 87(2)(b) (enc. 6A-B). Detective Tacconi stated that he recovered seventeen

ziplock bags of marijuana from the floor of the apartment, where he observed § 87(2)(b) drop them. Additionally, Detective Tacconi observed § 87(2)(b) drop a marijuana cigar, which he also recovered from the floor.

#### Police Department Documents:

Search Warrant § 87(2) (enc. 7A), obtained by Detective Paul Tacconi, was signed on November 14, 2002, by Supreme Court Justice § 87(2). The warrant entitled officers to enter § 87(2)(b) without prior notice of purpose or authority because there was probable cause to believe that controlled substances and related paraphernalia would be found inside. The warrant gave the officers permission to search the apartment as well as any person found inside the apartment.

The tactical plan for the warrant (enc. 7B) identifies Lieutenant McGinn as the ranking officer in charge for the warrant and Sergeant Seychell as the secondary supervisor.

§ 87(2)(b) s arrest report (enc. 8A-C) indicates that § 87(2)(a) 160.50

Detective Tacconi was the arresting officer.

§ 87(2)(b) s arrest report (enc. 9A-C) and the related property voucher (enc. 9D) indicate that he was § 87(2)(b). Detective Tacconi was his arresting officer also.

#### Officer Identification:

Lieutenant McGinn was identified as the subject officer in the entry and search of the apartment since the tactical plan identified him as the ranking officer in charge for the warrant execution. He was identified as the subject officer in the threat of arrest allegation as well since § 87(2)(b) described the officer who threatened to arrest his wife as an older white male who was giving orders to the other officers on the scene. § 87(2)(b) stated that this officer was also present and seemed to be the supervisor on the scene during the May 6, 2003 incident. The tactical plan from the May 6 (enc. 11) search warrant confirms that Lieutenant McGinn was also the ranking officer in charge during that incident. The secondary supervisors for the two warrants were different officers (Sergeant Seychell on November 19 and Sergeant Bruen on May 6), reinforcing the identification of Lieutenant McGinn as the subject officer.

#### Civilian History of Arrests and Convictions:

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

#### Officer History:

Lieutenant McGinn has been a member of the New York City Police Department since January 26, 2003. He has six prior complaints on his CCRB history. In case number 6394104, Lieutenant McGinn was substantiated for a force allegation made in 1994; there is no record of the NYPD disposition for this case. (enc. 1)

#### Conclusions and Recommendations

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(a) 160.50

*Allegation A* is that officers acting under the authority of Lieutenant McGinn entered and searched § 87(2)(b)

§ 87(2)(g)

*Allegation B* is that unidentified officers used physical force against § 87(2)(b) § 87(2)(b) stated that officers entered his apartment yelling, “Everyone on the floor!” When he remained standing in his kitchen, two officers, whom he could not describe, grabbed him by his arms, led him into his living room, pushed him to the ground, and handcuffed him. The search warrant paperwork did not identify the subject officers. Lieutenant McGinn, although he could not remember who actually secured § 87(2)(b) stated that, in general, during the execution of a search warrant, officers may place the occupants of an apartment on the floor and handcuff them as a safety precaution. § 87(2)(g)

*Allegation C* is that Lieutenant McGinn threatened to arrest § 87(2)(b) s wife, § 87(2)(b) § 87(2)(b) stated that when he “mouthed off” to the officers, calling them “rogue cops” and threatening to file a complaint against them, the supervisor on the scene threatened to arrest § 87(2)(b) if § 87(2)(b) did not apologize. According to § 87(2)(b) he apologized and his wife was left at the apartment. Lieutenant McGinn stated that he could not recall any conversation he may have had with civilians during the incident, but denied threatening to arrest § 87(2)(b) § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: